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Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

P. BRIAN BRUMFIELD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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7 7 PP

QUESTION PRESENTED

Whether federal employees who knowingly, willingly and maliciously provide false oral statements and false written affidavits in the course of an official investigation, are acting within the scope of their federal employment and, thus, immune from common law claims of tortious conduct?

PARTIES TO THE PROCEEDINGS

Petitioner

P. Brian Brumfield is an individual with no corporate affiliations.

Respondent

The United States of America.

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The Opinions of the United States Court of Appeals for the Third Circuit that give rise to this Petition are attached hereto in Appendix A beginning at page 1a.

JURISDICTION

By opinion dated November 14, 2000 (Appendix A, 1a-13a) and by Order amending the slip opinion dated November 30, 2000 (Appendix B, 14a-15a), the United States Court of Appeals for the Third Circuit affirmed the decision of the United States District Court for the Middle District of Pennsylvania dismissing Petitioner's civil Complaint.

The Plaintiff, P. Brian Brumfield, the Petitioner herein, originally filed a civil suit in state court against five of his fellow employees, all of whom were employed by the United States Department of Justice, Bureau of Prisons. Petitioner's Complaint alleges that the individual defendants committed tortious conduct against him predicated on knowingly false written affidavits and oral statements given by the individual defendants in an internal investigation by the Bureau of Prisons' Office of Internal Affairs with respect to Petitioner's alleged unprofessional conduct.

The Defendants removed the case to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1442(a)(1), which allows officers of the United States agencies to remove civil actions against them to a federal court. Pursuant to 28 U.S.C. § 2679, the United States moved to substitute itself for the individual Defendants, asserting that the individual Defendants were, at all times relevant, acting within the scope of their employment. Because federal employees acting within the

scope of their employment enjoy absolute immunity on state tort law claims, the Complaint was dismissed.

This Petition is being filed within 90 days of November 14, 2000, and jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THIS CASE

28 U.S.C. § 2679 states:

> The remedy against the United States provided by [the Federal Tort Claims Act] for injury . . . , resulting from the negligent or wrongful act . . . , of any employee of the government acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages arising by reason of the same subject matter against the employee . . .

28 U.S.C. § 2679(d)(1) states:

> Upon certification by the Attorney General that defendant employee was acting within the scope of [her] office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim . . . , shall be deemed an action against the United States . . . and the United States shall be substituted as the party defendant.

STATEMENT OF THE CASE

Petitioner's Complaint alleges that at all times relevant to it, the individually named defendants were employed by the United States Department of Justice, Federal Bureau of Prisons, in different capacities. He further alleges that he was employed by the Federal Bureau of Prisons as a supervisory correctional officer prior to being disciplined.

Petitioner alleges that the involved individuals conspired to cause administrative charges to be brought against him and caused him to be disciplined in connection with his employment, knowing that the charges that they were making against him were false and would injure him. The specific allegations made against the Petitioner by the involved individuals concerned claims of job-related sexual and/or inappropriate misconduct and statements.

Petitioner alleges that in October and November of 1996, Internal Affairs' agents met with the involved individuals to conduct interviews. Subsequently, the involved individuals were asked to and did sign affidavits containing false facts concerning the Petitioner. Furthermore, in connection with the allegations, the involved individuals submitted false written and oral statements of alleged misconduct.

Petitioner alleges that the individuals in their affidavits and written statements, as well as the oral statements that they gave to the investigating agents, provided false information and acted with the sole intent to injure the Petitioner. Petitioner alleges that the false oral and written statements, as well as the false affidavits, were made knowingly, willfully and maliciously.

According to the Federal Bureau of Prisons' Policy Statement 3420.08 (March 7, 1996), during the course of an official investigation, employees are to cooperate fully by providing all pertinent information which they may have. Full cooperation requires truthfully responding to all questions and providing a signed affidavit if requested. Any employee who fails to cooperate fully or who hinders an investigation is subject to disciplinary action, up to and including removal. (Appendix H, 63a.)

REASONS FOR GRANTING THE WRIT

The decision by the Third Circuit not only protects but invites federal employees to perjure themselves in connection with official investigations. This invitation spells disaster for the proper administration of all federal agencies. It is a decision that has decided an important question of federal law that should be settled by this Court. Specifically, should federal employees be permitted to lie as part of their employment? Moreover, should the state in which the federal employees work decide the scope of employment issue?

Federal employees must truthfully respond to all questions during the course of official investigations. (Federal Bureau of Prisons' Policy Statement 3420.08, Appendix H, 63a.) The Third Circuit has rewritten this mandate by incorrectly applying Pennsylvania state law. The Third Circuit, while citing many aspects of Pennsylvania state law, ignored the Restatement (Second) of Agency, § 228(2) which states that the conduct of a servant is not within the scope of employment if it is different in kind from that authorized or too little actuated by a purpose to serve the master. Moreover, the Third Circuit failed to even mention Restatement (Second) of Agency, § 229 which states that the course of employment does not include the commission of unlawful acts or acts

contrary to positive orders of the employer. Mauk v. Right, 367 F.Supp. 961 (M.D. Pa. 1973); Kozak v. Joseph Reilly Coal Co., 141 Pa. Super. 413, 15 A.2d 531 (1940); Garrahan v. Glen Alden Coal Co., 135 Pa. Super. 307, 5 A.2d 437 (1939).

Petitioner implores this Court to exercise its supervisory jurisdiction to undo this drastic departure from the settled mandates of the Bureau of Prisons, Department of Justice, that employees must be truthful in official investigations.

Indeed, the decision of the Third Circuit invites criminal conduct by federal employees and permits those employees who commit such criminal conduct to be immune from civil liability.

Under the reasoning of the Third Circuit, a federal prison guard could potentially beat an inmate to death and claim that he was protecting guards from potential danger. Utilizing the reasoning of the Third Circuit, although this is "criminal" it is "clearly incidental to the master's business". (Appendix A at 9a.) Further, it is the kind of act that the employee is employed to perform (to control inmates), it occurs substantially within the authorized time and space limits (in the prison during work hours), and it is actuated, at least in part, by a purpose to serve the master (to protect other guards and the public in general).

The list of potential horrors as a result of the Third Circuit's judicial expansion of the Bureau of Prisons' regulations is unending. Election officials could purposefully fix elections; presidents could commit perjury; lawmakers could sexually harass their secretaries; FBI agents could shoot down innocent citizens; federal marshals could stage a mass

execution of prisoners; taxing officials could falsify tax returns and then prosecute individuals for enjoyment; air traffic controllers could cover up air disasters; and the military could shoot down civilian planes.

Federal agencies are empowered by law to create regulations to govern their administration. The Bureau of Prisons' regulations mandate that, in the course of official investigations, employees must tell the truth. The federal district court and now the Third Circuit have eviscerated that mandate by holding that to lie and to perjure oneself is within the scope of employment. Under no circumstances whatsoever should this be permitted.

Moreover, and perhaps more troubling, is the fact that this scope of employment issue has been decided by state law. Under this reasoning, a federal employee's scope of employment in Maine could be different than a similarly situated federal employee in Texas. A prison guard could lie in Pennsylvania but not in Nevada.

Petitioner submits that federal employees must all be treated the same under the same circumstances and that the failure to do so has wide ranging, practical and legal implications.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his Writ of Certiorari.

Respectfully Submitted,

CAMPANA, CAMPANA & LOVECCHIO, L.L.P.

/s/_____

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Filed November 14, 2000]

No. 00-3275

P. BRIAN BRUMFIELD,
Appellant,

v.

SHERRI SANDERS; MICHELLE SHADDAY; BRENDA DERR-BLAKENEY; M. JANE HUFF; CARLA MEYERS; UNITED STATES OF AMERICA

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. 98-cv-01482)
District Judge: Honorable Malcolm Muir

Argued: October 6, 2000

Before: BARRY, WEIS, and ROSENN, Circuit Judges.

(Filed November 14, 2000)

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

ROSENN, Circuit Judge.

This appeal presents the uncommon scenario of a civil suit in a state court by a federal employee against five of his fellow employees, all of whom were employed by the United States Department of Justice, Bureau of Prisons ("BOP"). The plaintiff, P. Brian Brumfield, filed his complaint in state court alleging that he and all five individual defendants were employed by BOP at the Allenwood Federal Correctional Facility ("FCI Allenwood"). The complaint alleged state tort law claims of conspiracy, prima facie or intentional tort, abuse of process and defamation against all five defendants. Brumfield's claims are predicated on written affidavits and oral statements given by the defendants in a 1996 investigation by the BOP Office of Internal Affairs ("OIA") with respect to Brumfield's unprofessional conduct.

As a result of the investigation, the warden disciplined Brumfield, who appealed the warden's action to the Merit Systems Protection Board ("MSPB"). The appeal was resolved by agreement. Brumfield then sued the individual defendants in the Court of Common Pleas, Union County, Pennsylvania. The defendants removed the case to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1442(a)(1), which allows officers of United States agencies to remove civil actions against them to a federal district court. Thereafter, the United States moved

under the Westfall Act[1] to substitute itself for the individual defendants, asserting that the individual defendants were, at all relevant times, acting within the scope of their employment. The District Court dismissed the complaint on the recommendation and report of the magistrate judge. Brumfield timely appealed. We affirm, although on the primary issue on appeal we do so on grounds different than those of the District Court.[2]

I.

On appeal, the appellant makes three arguments. First, he argues that the district court erred in denying Brumfield's request for discovery on the scope of employment issue. Second, he contends that the district court wrongly

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[1] The relevant provision of the Westfall Act states:

> The remedy against the United States provided by [the Federal Tort Claims Act] for injury . . . resulting from the negligent or wrongful act . . . of any employee of the government acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages arising by reason of the same subject matter against the employee . . . .

28 U.S.C. § 2679.

[2] "An appellate court may affirm a result reached by the District Court on different reasons, as long as the record supports the judgement." Guthrie v. Lady Jane Collieries, Inc., 722 F.2d 1141, 1145 n. 1 (3d Cir. 1983)(citing Helvering v. Gowran, 302 U.S. 238, 245, 58 S. Ct. 154, 157, 82 L. Ed. 224 (1937)).

determined that the individual defendants' challenged actions occurred within the scope of their employment. Finally, he maintains that the District Court erred in predicting that the Pennsylvania Supreme Court would not recognize a cause of action for prima facie or intentional tort.

II.

The threshold question in this appeal pertains to whether the plaintiff 's claim of tortious conduct occurred within the scope of the individual defendants' employment. Brumfield acknowledges that a federal employee is absolutely immune from common law claims of tortious conduct occurring within the scope of his or her employment. The Westfall Act, also known as the Federal Employees Liability Reform and Tort Compensation Act, provides federal employees acting within the scope of their employment absolute immunity from damage liability on state law tort claims. See Melo v. Hafer, 13 F.3d 736, 739 (3d Cir. 1994). Under the Westfall Act, the Attorney General of the United States may certify, as was done in this case, that the employee was acting within the scope of his or her employment, and request that the United States be substituted as the only defendant.[3] See 28 U.S.C. § 2679(d)(1). However, the plaintiff correctly argues that certification by the Attorney General is only prima facie evidence that the alleged injurious conduct occurred within the scope of the federal employee's

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[3] The Attorney General has delegated her certification authority to the United States Attorneys. See 28 C.F.R. § 510; 28 C.F.R. § 15.3.

duties. See Schrob v. Catterson, 967 F.2d 929 (3d. Cir. 1992); 28 U.S.C. § 2679(d)(2). Brumfield, therefore, requested of the District Court that he be permitted reasonable discovery from the individual defendants. The District Court, however, denied this request and decided without discovery and without a hearing on the question that the defendants were acting within the scope of their employment.

In denying discovery, the District Court noted that Brumfield had already engaged in extensive discovery relating to the scope of employment of the individual defendants in the MSPB proceeding and that he should not be permitted to duplicate those efforts in the present proceeding. In permitting the government to substitute the United States as sole defendant, the District Court found that this argument had considerable merit in light of the absence of any response by the plaintiff. We believe that the District Court's rationale in the earlier stage of the proceedings logically applies with equal force to the plaintiff 's efforts to secure discovery at this stage.

Moreover, the Attorney General's certification appears to have been based on the plaintiff's complaint. The certification states, in relevant part:

> I have read the complaint and . . . upon the basis of the information now available to me with respect to the incidents referred to therein, I am of the opinion that the [individual] defendants . . . were acting within the scope of their employment . . . pursuant to an official government investigation at the time of the conduct alleged in the complaint.

Brumfield v. Sanders, 50 F. Supp. 2d 381, 385 (W.D. Pa. 1999). In a later affidavit, the Attorney General reiterated that her conclusion that the individual defendants were acting within the scope of their employment was based on the allegations in Brumfield's complaint.[4] The District Court opined:

> Permitting additional discovery when the Attorney General's certification is not based on a different understanding of the facts than is reflected in Brumfield's complaint would undermine the intent of the Westfall Act to protect federal employees from responding to state law tort claims.

Brumfield nowhere contends that the Attorney General misunderstood the allegations in the complaint. Our standard of review of questions concerning the scope or opportunity for discovery is for abuse of discretion. See Country Floors Inc. v. Gepner & Ford, 930 F.2d 1056, 1062 (3d Cir. 1992). We see no abuse of discretion in the District Court's refusal to permit additional discovery.

The District Court's discovery ruling does not end the matter, however, because Brumfield argues that the District Court erred as a matter of law when it held that the individual

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[4] Specifically, the Attorney General based her conclusion on the allegation that the warden encouraged female employees to report unprofessional conduct by male supervisors and that the defendants prepared the challenged written statements at the request of OIA investigators during the course of an official investigation.

defendants acted within the scope of their employment during the OIA investigation. It is undisputed that whether they did or not is a matter of Pennsylvania state law. Pennsylvania has accepted the Restatement (Second) of Agency's definition of conduct "within the scope of employment." See Butler v. Flo-Ron Vending Co., 383 Pa. Super. 633, 646 (Pa.Super. 1989); Aliota v. Graham, 984 F.2d 1350, 1358 (3rd Cir. 1993). According to the Restatement, "conduct is within the scope of employment if, but only if: (a) it is the kind [the employee] is employed to perform; (b) it occurs substantially within the authorized time and space limits [and] (c) it is actuated, at least in part, by a purpose to serve the master . . . ." Restatement (Second) Agency § 228.

Brumfield does not dispute that factors (a) and (b) are met in this case, but he contends that, because the defendants' accusations were motivated by personal animosity toward him, they were not intended to "serve the master." This argument, however, does not comport with Pennsylvania agency law. This Court has previously held that under Pennsylvania law, the mere existence of a personal motivation is insufficient to relieve the employer from liability where the conduct also benefitted him and was within the scope of employment generally. Eisenberg v. Gagnon, 766 F.2d 770, 783 (3rd Cir . 1985) (citing Yaindl v. Ingersoll-Rand Co., 281 Pa. Super. 560, 575-76 (not followed on other grounds) (1981)); Restatement (Second) of Agency § 236 (1958)). Here, the statements and affidavits of the individual defendants were given at the behest of OIA officials to assist them in their official investigation. Personal animosity, if any existed, was subsumed by the benefit that inured to employees generally at the Allenwood institution. If the OIA investigation revealed unprofessional conduct by Brumfield,

the District Court noted that "appropriate discipline could be meted out and unprofessional conduct by a supervisor halted." Brumfield, 50 F. Supp. 2d at 385.

Brumfield also contends that "the course of employment" does not include commission of unlawful acts or acts contrary to orders, policies, procedures and standards of the BOP.[5] Brumfield maintains that the individual defendants "lied during the course of an official investigation and lied on false affidavits." Thus, he argues that their actions were outside the scope of employment and therefore not protected by the Westfall Act. This argument too was properly rejected by the District Court. The Pennsylvania Superior Court has specifically held that "[the] liability of the employer may extend even to intentional or criminal acts committed by the servant." Butler, 383 Pa. Super. at 646. See also, Aliota, 984 F.2d at 1358 ("In the absence of any contrary decisions or pronouncements by the Supreme Court of Pennsylvania, we predict that that court would follow [Butler]").

Although the individual defendants were required to provide only truthful responses to questions posed in the investigation, "an act, although forbidden or done in a forbidden manner, may be within the scope of employment." Restatement (Second) of Agency § 230; Aliota, 984 F.2d at

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[5] The cases Brumfield cites to support this proposition construe the Pennsylvania Workmen's Compensation Act, specifically, when an injury occurs "in the course of employment" under the act. See Kozak v. Joseph Reilly Coal Co., 141 Pa. Super. 413 (1940); Garrahan v. Glen Alden Coal Co., 135 Pa. Super. 307 (1939). They do not discuss Pennsylvania's common law of agency and are not relevant to this case.

1358. Under Pennsylvania law, even unauthorized acts may be within the scope of employment "if they are clearly incidental to the master's business." Shuman Estate v. Weber, 276 Pa. Super. 209, 216 (1980). Here, Brumfield's complaint asserts that during the course of the investigation, the individual defendants were encouraged to come forward and asked to and did sign affidavits which he alleged contained false facts about him. Thus, even assuming the statements were false, plaintiff's allegation squarely makes the individual defendants' conduct incidental to BOP's business, and Brumfield proffered no evidence that the defendants' conduct was not motivated at least in part by a purpose to serve the BOP.

Finally, according to the Restatement, :

> it may be found to be within the scope of employment of a person . . . to accuse another of wrongful conduct or report to others the supposed wrongful conduct of [another] employee . . . . A servant having a duty to make such reports . . . to his employer . . . may subject his employer to liability for his untruthful statements.

Restatement (Second) of Agency § 247 cmt. e. See also, Aliota, 984 F.2d at 1359 (predicting that the Pennsylvania Supreme Court would adopt Restatement § 247). As the district court noted, "[BOP's] policy makes clear that it was within the scope of Defendants' employment duties to cooperate with investigators of the [OIA] and provide potential information regarding any unprofessional conduct by Brumfield." Brumfield, 50 F. Supp. 2d at 384. Thus, the

defendants in this case conformed to the very duty contemplated by Restatement § 247 comment e, *supra*. We therefore conclude that the statements made by the defendants, even if false, were within the scope of their employment. Accordingly, the District Court committed no error in ruling that the defendants' conduct during the OIA investigation was within the scope of their employment.

III.

The primary and final issue in this appeal is Brumfield's contention that under Pennsylvania law, the individual defendants committed an intentional tort as defined in Section 870 of the Restatement (Second) of Torts and the District Court therefore erred in dismissing his complaint. Although the District Court dismissed all of the defendant's underlying claims against the United States, Brumfield only argues on appeal that it was error to dismiss his claim for intentional or prima facie tort as set forth in Count II of his complaint. This is consistent with his position in the District Court, where he objected only to the dismissal of his claim for intentional tort. The District Court rejected his objection, predicting that when faced with the question, the Pennsylvania Supreme Court would not recognize a cause of action for intentional or prima facie tort as set forth in the Restatement. Under our analysis of the claim, there is no need for us to predict whether the Supreme Court of Pennsylvania would recognize such a claim.

The Federal Tort Claims Act ("FTCA") bars actions against the United States for wrongful use of civil proceedings

and defamation.[6] Claims "arising out of . . . libel, slander, misrepresentation [or] deceit" are excepted from the United States's general waiver of sovereign immunity. 28 U.S.C. § 2680(h). Thus, defamation suits against the United States are prohibited. In fact, cases from other circuits make clear that an individual who is defamed by a federal employee acting within the scope of his or her employment has no remedy due to the protections afforded by the Westfall Act and the FTCA. See B & A Marine Co., Inc v. American Foreign Shipping Co., Inc., 23 F.3d 709, 714-715 (2d Cir. 1994); Aviles v. Lutz, 887 F.2d 1046 (10th Cir. 1989).[7]

In Count IV of his complaint, charging defamation, Brumfield alleged, inter alia, that the individual defendants "sign[ed] affidavits containing false facts" about Brumfield, "submitted written false statements of alleged misconduct" by Brumfield, and gave false oral statements about Brumfield to investigating OIA agents. This claim was dismissed in the District Court and was not appealed. Without any additional allegations, Count II incorporates by reference averments of the complaint, but asserts that the "defendants' conduct and statements as aforesaid are actionable as an intentional tort under Pennsylvania law and pursuant to § 870 of the Restatement (Second) of Torts." Brumfield's complaint does not allege any underlying facts in Count II that make his intentional tort claim different from his already dismissed

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[6] 28 U.S.C. § 2680(h) creates exceptions to the general waiver of sovereign immunity set forth in 28 U.S.C. § 1346.

[7] Of course, defamation committed by a federal employee acting outside the scope of his or her employment may be actionable.

defamation claim or his conspiracy claim in Count I. Count IV, the defamation claim, contained no independent allegations of defamation but relies entirely on "the previous averments of the complaint," including Count I and Count II. Thus, the essence of his intentional tort cause of action is that the individual defendants made false statements about him that caused him economic harm and damage to his reputation. As such, it is precluded by § 2680.

Cases in other jurisdictions support our analysis. "In examining a complaint, we are bound to look beyond the literal meaning of the language to ascertain the real cause of the complaint." Jimenez-Nieves v. United States, 682 F.2d 1, 6 (1st Cir. 1982). In Jimenez-Nieves, the court rejected a claim for pecuniary and non-pecuniary damages arising from the erroneous dishonoring of a Social Security check. Noting that the dishonoring of the check "implicitly communicated defamatory statements about [the] plaintiff," then-Judge Breyer concluded that the claim "resound[ed] in the heartland of the tort of defamation" and was barred by § 2680. Id. at 6.

In Hoesl v. United States, 451 F. Supp. 1170 (N.D. Cal. 1978), aff'd on different grounds per curiam, 629 F.2d 586 (9th Cir. 1980), a government employee sued the United States and a government-employed psychiatrist for an allegedly negligent report stating that the plaintiff suffered a mental disability which made him unable to carry out his responsibilities. In holding that the substance of the plaintiff 's claim was defamation, the court stated that the defamation exception to the FTCA could not be avoided "by attaching a different label to the tort." Id. at 1174.

IV.

In conclusion, it is obvious upon examination of the complaint in this case, that the anatomy of Counts I, II and IV of Brumfield's complaint are the same. The effort to separate them by draping them with different dress and labels fails to disguise their substantive similarity. For this reason, Count II, like Counts I and IV, is barred by the defamation exception to the FTCA.

Accordingly, the District Court committed no error in dismissing the plaintiff 's entire complaint. The judgment of the District Court will be affirmed. Costs taxed against the appellant.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Filed November 30, 2000]

No. 00-3275

P. BRIAN BRUMFIELD,
Appellant,

v.

SHERRI SANDERS; MICHELLE SHADDAY; BRENDA DERR-BLAKENEY; M. JANE HUFF; CARLA MEYERS; UNITED STATES OF AMERICA

Before: BARRY, WEIS, and ROSENN, Circuit Judges.
(Filed November 30, 2000)

ORDER AMENDING SLIP OPINION

The slip opinion in the above case is hereby amended as follows:

1. On page 8, section III, line 16 of the first paragraph, delete the phrase "of the claim."

BY THE COURT:

/s/ Max Rosenn
Circuit Judge

Dated: November 30, 2000

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

[Filed March 6, 2000]

No. 4:CV-98-1482

Notice of Removal Filed 9/8/98

P. BRIAN BRUMFIELD,
Plaintiff,

v.

UNITED STATES OF AMERICA
Defendant.

(Judge Muir)

ORDER

March 6, 2000

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This action was originally filed by Plaintiff P. Brian Brumfield on August 7, 1998, in the Court of Common Pleas of Union County, Pennsylvania. On September 8, 1998, the action was removed to this court. At all times relevant to the allegations set forth in the complaint, Brumfield was employed as a Supervisory Correctional Officer at the Allenwood Federal Correctional Institution, White Deer, Pennsylvania ("FCI-Allenwood"). Brumfield named as Defendants the following five individuals employed at FCI-Allenwood: Sherri Sanders, Michelle Shadday, Brenda Derr-Blakeney, M. Jane Huff, and Carla Myers. In the complaint Brumfield sets forth state tort law claims of conspiracy (Count I), intentional or prima facie tort (Count II), wrongful use of civil proceedings (Count III) and defamation (Count IV) against all five Defendants. Brumfield's claims arise out of Defendants' participation in an investigation by the Office of Internal Affairs of the Federal Tort Claims Act, 28 U.S.C. § 1346 (b) and § 2671 et seq.

The Federal Tort Claims Act provides a remedy in damages for the wrongful acts of employees of the United States. United States vs. Muniz, 374 U.S. 150, 150 (1963). It is well-settled that a federal district court in considering an action under the Federal Tort Claims should apply the law of the state, in this case Pennsylvania, in which the alleged tortious conduct occurred. 28 U.S.C. § 1346 (b) (1996); Tools vs. United States, 588 F.2d 403, 406 (3d Cir. 1978); O'Neal vs. Department of Army, 852 F. Supp. 327, 334-35 (M.D. Pa. 1994); Turner vs. Miller, 679 F. Supp. 441, 443 (M.D. Pa. 1987).

Brumfield's case was assigned to us but referred to Magistrate Judge Thomas M. Blewitt for preliminary

consideration. On April 16, 1999, Magistrate Judge Blewitt issued an order granting Defendants' motion to substitute the United States as the sole Defendant. On April 20, 1999, Brumfield field an appeal pursuant to M.D. Pa Local Rule 72.2 Briefs were submitted and the matter became ripe for disposition on May 21, 1999. By order of May 27, 1999, we affirmed the order of Magistrate Judge Blewitt substituting the United States as the sole Defendant and remanded the case to Magistrate Judge Blewitt for further proceedings.

On June 14, 1999, the United States filed a motion to dismiss the complaint. On January 10, 2000, Magistrate Judge Blewitt filed a report in which he recommended that the motion to dismiss be granted. Brumfield filed objections to that report on January 18, 2000. Briefs were submitted and the matter ripe for disposition on February 18, 2000.

When objections are filed to a report of a magistrate judge, we make a de novo determination of those portions of the report or specified proposed findings or recommendations made by the magistrate judge to which there are objections. United States vs. Raddatz, 447 U.S. 667 (1980); 28 U.S.C. § 636 (b)(1); Local Rule 72.31. District judges have wide discretion as to how they treat recommendations of the magistrate judge. Id. Indeed, in providing for a de novo review determination rather than a de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound discretion, chooses to place on a magistrate judge's proposed findings and recommendations. Id. See also Mathews vs. Weber, 423 U.S. 261, 275 (1976); Goney vs. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

Brumfield only objects to Magistrate Judge Blewitt's recommendation that the intentional or prima facie tort claim (Count II) be dismissed. He concedes that Counts I, III and IV should be dismissed. Count II of the complaint is based on § 870 of the Restatement (Second) of Torts. That section provides as follows:

> One who intentionally caused injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justified under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability.

Magistrate Judge Blewitt's rightly concluded that in the absence of any Pennsylvania court either acknowledging or rejecting the existence of a cause of action for intentional tort, the court must predict how the Pennsylvania Supreme court would rule. Magistrate Judge Blewitt concluded that the Pennsylvania Supreme Court would decline to recognize such a claim and bases that conclusion on his review of the case of Charles Shaid of Pennsylvania, Inc. v. The George Hyman Construction Co., 947 F.Supp. 844, 853-55 (E.D.Pa. 1996) (Robreno, J). In Shaid the district court predicted that the Pennsylvania Supreme Court would decline to recognize a claim of intentional tort under § 870 of the Restatement (Second) of Torts. Id. The Court stated as follows:

> No plaintiff bringing suit under Pennsylvania law has ever recovered under a theory of prima facie tort. No Pennsylvania Court or court interpreting Pennsylvania law has ever

> stated that, in Pennsylvania, prima facie tort is a valid cause of action. After canvassing the authorities and forecasting how the Pennsylvania Supreme Court would apply Pennsylvania public policy and balance the social utility of adopting section 870 of the Restatement (Second) of Torts against the social costs, the Court concludes that if presented with a claim for prima facie tort, the Pennsylvania Supreme Court would not recognize such a cause of action.

Id. at 855-56. At least two other federal courts have predicted that the Pennsylvania Supreme Court would decline to recognize a claim for intentional or prima facie tort. See Highes vs. Halbach & Braun Industries, Ltd., 10 F.Supp.2d 491, 499 (W.D.Pa. 1998) (Ambrose, J.); West Coast Franchising Co. vs. WCV Corp., 30 F.Supp.2d 498, 500 (E.D.Pa. 1998) (Pollak, J.).

In support of his position, Brumfield contends that the Pennsylvania Superior Court in Smith vs. Griffith, 476 A.2d 22 (1984) acknowledged the general rule of liability for an intentional tort under § 870 of the Restatement (Second) of Torts. However, the district court in Shaid thoroughly reviewed the Smith case and concluded that that case did not recognize a cause of action for intentional or prima facie tort. In Shaid the district state that "[n]owhere in Smith did the Superior Court say that prima facie tort is a valid cause of action in Pennsylvania. Rather, the court examined, in light of the elements of the tort plaintiff claimed defendant had committed, the elements of a prima facie tort as outlined by section 870 and concluded that the averments of plaintiff's

complaint did not satisfy them." Shaid, 947 F.Supp. at 853. We conclude that the Pennsylvania Supreme Court will not recognize a cause of action for intentional or prima facie tort under § 870 of the Restatement (Second) of Torts.

In light of the three district court cases cited above we find no error in Magistrate Judge Blewitt's report and we shall adopt it as our own and dismiss Brumfield's complaint.

NOW, THEREFORE, IT IS HEREBY ORDER THAT:

1. The Report and Recommendation of Magistrate Judge Thomas M. Blewitt filed on January 10, 2000, is adopted in toto.

2. The motion of the United States to dismiss the complaint (Doc. 18) is granted.

3. The Clerk of Court shall send a copy of this order to Magistrate Judge Blewitt.

4. The Clerk of Court shall close this case.

/s/_____
MUIR
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

[Filed May 27, 1999]

No. 4:CV-98-1482

Notice of Removal Filed 9/8/98

P. BRIAN BRUMFIELD,
Plaintiff,

v.

SHERRI SANDER, ET AL.,
Defendants.

(Judge Muir)

ORDER

May 27, 1999

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This action was originally filed by Plaintiff P. Brian Brumfield on August 7, 1998, in the Court of Common Pleas of Union county, Pennsylvania. On September 8, 1998, the action was removed to this court. At all times relevant to the allegations set forth in the complaint, Brumfield was employed as a Supervisory Correctional Officer at the Allenwood Federal Correctional Institution, White Deer, Pennsylvania ("FCI-Allenwood"). Brumfield named as Defendants the following four individuals employed at FCI-Allenwood: Sherri Sanders, Michelle Shadday, Brenda Derr-Blakeney, M. Jane Huff, and Carla Myers. In the complaint Brumfield sets forth state tort law claims of conspiracy, abuse of process, intentional infliction of emotional distress and defamation against all five Defendants. Brumfield's claims arise out of Defendants' participation in an investigation by the Office of Internal Affairs of the Federal Bureau of Prisons regarding alleged unprofessional conduct by Brumfield.

The case was assigned to us but referred to Magistrate Judge Thomas M. Blewitt for preliminary consideration. On April 16, 1999, Magistrate Judge Blewitt issued an order (1) granting Defendants' motion to substitute the United States as the sole Defendant, (2) denying Brumfield's motion to strike Defendants' motion for substitution,[1] (3) deeming Defendants' motion to dismiss withdrawn for failure to file a supporting brief, and (4) declaring moot Brumfield's motion to hold

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[1] Brumfield did not file a brief in opposition to Defendants' motion to substitute. Instead Brumfield filed a motion to strike Defendants' motion to substitute. This was improper and not authorized by the Local Rules of Court. By failing to file a brief in opposition, Defendants' motion to substitute could have been deemed unopposed.

Defendants' motion to dismiss in abeyance. On April 20, 1999, Brumfield filed an appeal pursuant to M.D. Pa. Local Rule 72.2. The appeal has been briefed and became ripe for disposition on May 21, 1999.[2]

Local Rule 72.2 provides in relevant part as follows:

> Any party may appeal from a magistrate judge's order determining a non-dispositive pretrial motion or matter in any civil or criminal case in which the magistrate judge is not the presiding judge of the case, within ten (10) days after issuance of the magistrate judge's order . . . A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule.

Brumfield alleges in the complaint that in September of 1996 the Warden of FCI-Allenwood conducted both group and private meetings with female employees of the institution and encouraged them to come forward and speak out against any male supervisors "that they felt had done them injustice or

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[2] Brumfield's brief in support of the appeal consisted of three pages and merely incorporated the arguments set forth in the brief which was filed by Brumfield before Magistrate Judge Blewitt in support of his motion to strike Defendants' motion for substitution. We do not approve of this practice.

committed any wrongs." It is further alleged that in October and November of 1996 agents of the office of Internal Affairs conducted interviews with staff regarding allegations against Brumfield. Defendants then signed affidavits as well as other written statements concerning alleged misconduct by Brumfield.[3] Brumfield claims the affidavits and other written statement were false. At the conclusion of the investigation, the Warden of FCI-Allenwood on April 7, 1997, informed Brumfield that he would be transferred to another institution as he could no longer work effectively at FCI-Allenwood. On April 14, 1997, Brumfield was called to the Warden's office and informed by the Warden that he was being transferred to the Federal Correctional Institution, Fairton, New Jersey. Brumfield resigned as an employee of the Federal Bureau of Prisons because he did not want to be transferred to that institution.

The Westfall Act, also known as the Federal Employees Liability Reform and Tort Compensation Act, provides that federal employees acting within the scope of their employment are absolutely immune from damage liability on state tort law claims. 28 U.S.C. § 2679. Indeed, the Westfall Act provides that the Federal Tort Claims Act which permits suits against the United States is an individual's

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[3] We will not go into detail with regard to all of the allegations but only summarize one of the affidavits. Brumfield contends that Defendant Sherri Sanders noted in her affidavit or written statement that (1) he made an implication about oral sex during a pool game, (2) he had a wooden penis laying on a desk, (3) that she believed he made a sexually explicit statement about underwear, and (4) that he advised her to "keep her mouth shut in conjunction with the investigation."

sole remedy for a federal employee's negligence or intentional torts so long as the federal employee was acting within the scope of his or her employment when that federal employee was negligent or committed the intentional tort.

Once an action is brought against a federal employee for that employee's negligence or intentional wrongful conduct, the Westfall Act provides that the Attorney General may certify that the employee was acting within the scope of his or her employment at the time of the alleged wrongful conduct and request that the United States be substituted as the only Defendant. 28 U.S.C. § 2679(d)(1). The Attorney General's certification that the federal employee was acting within the scope of his or her employment is prima facie evidence of that fact. Melo vs. Hafer, 13 F.3d 736, 747 (3d Cir. 1994). The Attorney General has delegated her certification authority to the United States Attorneys. 28 U.S.C. § 510; 28 C.F.R. § 15.3. In the present case, Mary Catherine Frye, the Civil Chief of the United States Attorney's Office for the Middle District of Pennsylvania, certified that she read Brumfield's complaint and based on the incidents alleged, all of the Defendants were acting within the scope of their employment at the time of the conduct alleged in the complaint.

Brumfield contends that Magistrate Judge Blewitt should have denied Defendants' motion for substitution and permitted him reasonable discovery regarding whether Defendants were acting within the scope of their employment at all times relevant to the actions of which he complains. Bureau of Prisons' policy mandates that "during an official investigation, employees are to cooperate fully by providing all pertinent information they might have." (Ex. 2 at 9, ¶

13(c)) Also, employees are required to "immediately report to management any violation or attempted violation of any law or regulation . . . ." (Id. at 9, ¶ 13(a)) It is clear that Bureau of Prisons' policy makes clear that it was within the scope of Defendants' employment duties to cooperate with investigators of the Office of Internal Affairs and provide potential information regarding any unprofessional conduct by Brumfield.

Brumfield is apparently arguing that the falsity of the Defendants' affidavits and statements removes their actions from the scope of their employment. It is settled that Pennsylvania law controls the issue of whether Defendants were acting within the scope of their employment. The Court of Appeals for this circuit has predicted that the Pennsylvania Supreme Court will follow the Restatement (Second) of Agency in determining whether an employee's conduct is within the scope of his or her employment. Aliota vs. Graham, 984 F.2d 1350, 1358-59 (3d Cir. 1993).

Section 228 of the Restatement (Second) of Agency provides that conduct of an employee is within the scope of employment if (1) it is of the kind the employee is employed to perform, (2) it occurs substantially within the authorized time and space limits and (3) it is actuated, at least in part, by a purpose to serve the employer. In the present case the Defendants made statements in the context of an official governmental investigation. Defendants were required to cooperate with the investigation. Brumfield's allegations that Defendants intentionally made false statements about him out of animosity do not remove Defendants' actions from the scope of their employment. Shuman Estate vs. Weber, 276 Pa. Super. 209, 419 A.2d 169, 173 (Pa. Super. 1980) ("It is

not necessary . . . that the acts be specifically authorized by the master to fall within the scope of employment; it is sufficient if they are clearly incidental to the master's business . . . . "); see also Restatement (Second) of Agency ("Conduct may be within the scope of employment although done in part to serve the purposes of the servant or a third person."); Gulati vs. Zuckerman, 723 F. Supp. 353, 358 (E.D. Pa. 1989) (affording private government contractor federal immunity for alleged defamatory statements made in the context of Defense Department investigation).

In the present case, applicable Bureau of Prisons' policy makes clear that it was within the scope of Defendants' employment duties to cooperate with Office of Internal Affairs investigators and provide potential information regarding Brumfield's unprofessional conduct. Also, Defendants' efforts to assist in the investigation occurred within the time and space limits of their employment with the Bureau of Prisons. Their efforts were for the Bureau of Prisons' benefits, at least in part, because if the investigation were successful, appropriate discipline could be meted out and unprofessional conduct by a supervisor halted.

In the Defendants' brief in opposition, they also argue that there was no need for Magistrate Judge Blewitt to permit Brumfield to engage in discovery because he already undertook extensive discovery relating to the scope of employment issue in the context of his Merit System Protection Board proceeding and should not be permitted to duplicate those efforts in the present proceeding. Brumfield did not respond to this argument and we find that it has substantial merit. Permitting additional discovery when the Attorney General's certification is not based on a different

understanding of the facts than is reflected in Brumfield's complaint would undermine the intent of the Westfall Act to protect federal employees from responding to state law tort claims. See Melo v. Hafer, 13 F.3d 736, 747 (3d Cir. 1994) (discovery only permitted if the Attorney General's certification is based on a different understanding of the facts than is reflected in the complaint). We do not see how the Attorney General's certification is based on a different understanding of the facts than is reflected in the complaint and conclude that Magistrate Judge Blewitt's order authorizing substitution was not clearly erroneous or contrary to law. Consequently, we will affirm Magistrate Judge Blewitt's order authorizing substitution.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Magistrate Judge Blewitt's order authorizing substitution is affirmed.

2. This case is remanded to Magistrate Judge Blewitt for further proceedings.

/s/_____
MUIR
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE OF PENNSYLVANIA

[Filed April 16, 1999]

CIVIL ACTION NO. 4:CV-98-1482

P. BRIAN BRUMFIELD,
Plaintiff,

v.

SHERRI SANDER, ET AL.,
Defendants.

(Judge Muir)

(Magistrate Judge Blewitt)

ORDER

AND NOW, this 16th day of April, 1999, **IT IS HEREBY ORDERED THAT:**

1. The United States' Motion for Substitution **(Doc. 5)** is **GRANTED**. The Clerk of Court is directed to substitute the Unite States as Defendant in the above-captioned action.

2. Plaintiff's Motion to Strike Motion for Substitution **(Doc. 6)** is **DENIED**.

3. The Motion of the United States to Dismiss the Complaint **(Doc. 4)** is deemed **WITHDRAWN** for failure to file a supporting brief in accordance with L.R. 7.5 if the Rules of Court of the United States District Court for the Middle District of Pennsylvania.

4. Plaintiff's Motion to Hold Motion to Dismiss in Abeyance **(Doc. 6)** is rendered **MOOT**.

/s/_____
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: April 16, 1999

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE OF PENNSYLVANIA

[Filed January 10, 2000]

CIVIL ACTION NO. 4:CV-98-1482

P. BRIAN BRUMFIELD,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendants.

(Judge Muir)

(Magistrate Judge Blewitt)

REPORT AND RECOMMENDATION

This action was removed from Union County to this Court on September 8, 1998. (Doc. 1). Since the removal, the United States has been substituted as a Defendant and is the only remaining Defendant. (Doc. 12). Presently ripe for disposition is the United States' motion to dismiss the complaint. **(Doc. 18).**

I. Motion to Dismiss Standard.

The Defendant seeks to dismiss the complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6). When evaluating a motion to dismiss, the court must accept all material allegations of the complaint as true and construe all inferences in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A complaint should not be dismissed for failure to state a claim unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45 (1957); *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988). A complaint that sets out facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Estelle v. Gamble*, 429 U.S. 97, 107-108 (1976).

II. Discussion.

1. Wrongful Use of Civil Proceedings and Defamation.

The Defendant moves to dismiss Count III and Count IV of the complaint, arguing that the Federal Tort Claim Act's ("FTCA") waiver of sovereign immunity does not include such actions. 28 U.S.C. § 2680(h). In response to the motion, the "Plaintiff concedes that Count III - Wrongful Use of Civil Proceedings and Count IV - Defamation, must be dismissed pursuant to 28 U.S.C. § (sic) 2679, 2680(h)." (Doc. 20, p. 3). The Defendant's motion will be granted wiht respect to Counts III and IV.

2. *Count II - International infliction of emotional distress.*

The Defendant moves to dismiss Count II of the complaint on the basis that the Plaintiff is not entitled to relief, alleging an employment-related injury which is covered by Pennsylvania's workers compensation law. (Doc. 19, P. 5 citing 77 Pa.Stat.Ann. § 481(1). In response, the Plaintiff asserts that he has not set forth a claim for Intention Infliction of Emotional Distress. Rather, he has set forth "a cause of action under Pennsylvania law for International Tort."

As noted by the Defendants, because no Pennsylvania court has either acknowledged or rejected the existence of a claim for intentional tort, this Court must predict how the Pennsylvania Supreme Court would handle the matter. (Doc. 21, P. 3, citing Rabatin v. Columbus Lines, Inc., 790 F.2d 22, 24 (3d Cir. 1986).[1] The issue was squarely addressed in the case of *Charles Shaid of Pennsylvania, Inc. v. The George Hyman Construction Co.*, 947 F. Supp. 844, 853 (E.D. Pa 1996). The *Shaid* Court predicted that the Pennsylvania Supreme Court would decline to recognize a claim for intentional tort. The Defendant points out that two other courts within our district have followed this holding. (Doc. 21, P.4, citing *Hughes v. Halbach & Braun Indus., Ltd.*, 10 F. Supp.2d 491, 499-500 (W.D. Pa. 1998); *Collier by Collier v. William Penn School District*, 956 F. Supp 1209, 1217 (E.D. Pa. 1997).

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[1] An intentional tort cause of action is also known as a prima facie tort. *Charles Shaid of Pennsylvania, Inc. v. The George Construction Co.*, 947 F. Supp. 844, 847 (E.D. Pa. 1996).

Our research has turned up yet another case in the Third Circuit where the district court was persuaded by the rationale in *Shaid: West Coast Franchising Co. v. WCV Corporation*, 30 F. Supp.2d 498, 500 (E.D. Pa. 1998). We are aware of no rulings in the State of Pennsylvania that would give us cause to depart from this viewpoint. As such, the Defendant's motion to dismiss should be granted as to Count II.

3. Civil Conspiracy.

The Defendant also seeks dismissal of the conspiracy count. The Defendant argues that the FTCA's exclusion of certain tort actions against the United States has been construed to preclude conspiracy claims which are based on those torts. (Doc. 21, p. 8, citing *Matthews v. United States*, 1994 WL 328285, *2 (7th Cir. 1994); *United States v. Tinkoff*, 211 F.2d 892, 894 (7th Cir. 1954). We have reviewed the cases upon which the Defendant relies and are persuaded by the reasoning set forth in the *Matthews* decision.

In considering the Plaintiff's claims conspiracy and entrapment,[2] the *Matthews*' Court stated as follows:

> the FTCA's waiver of sovereign immunity does not include '[a]ny claim arising out of assault, battery, false imprisonment, false

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[2] Despite Plaintiff's assertions to the contrary, the *Matthews* Court considered the claim of conspiracy. Specifically, after weeding out inappropriately named Defendants, the Court stated that it would "consider Matthews' claims of conspiracy and entrapment against the United States." *Matthews*, 1994 WL at *2.

> arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights . . ." 28 U.S.C. § 2680(h). Although Matthews' claims were not labeled as ones for false imprisonment or malicious prosecution, we think they are clearly encompassed by those terms. Cf. *United States v. Tinkoff*, 211 F.2d 892, 894 (7th Cir. 1954)(holding that a plaintiff's claim that the government conspired to convict him on the basis of perjured testimony was 'clearly encompassed' by terms of 28 U.S.C. § 2680(h)). Therefore his claims under the FTCA must fail.

Matthews, 1994 WL 328285 *2.

The Plaintiff's underlying claims are abuse of process and defamation. These claims are clearly covered by 28 U.S.C. § 2680(h). Thus, the Plaintiff's conspiracy claims is subject to dismissal.

III. Recommendation.

Based on the foregoing, it is respectfully recommended that the Defendant's Motion to Dismiss the complaint be granted and the complaint be dismissed in its entirety.

/s/_____
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: January 10, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE OF PENNSYLVANIA

[Filed January 10, 2000]

CIVIL ACTION NO. 4:CV-98-1482

P. BRIAN BRUMFIELD,)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
Defendants.)

(Judge Muir)

(Magistrate Judge Blewitt)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **January 10, 2000.**

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a

recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall filed with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

/s/_____
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: January 10, 2000

APPENDIX G

IN THE COURT OF COMMON PLEAS OF UNION COUNTY, PA

[Filed August 7, 1998]

No. 98 731

P. BRIAN BRUMFIELD, *Plaintiff*,	)
v.	)
SHERRI SANDERS, MICHELLE SHADDAY, BRENDA DERR-BLAKENEY, M. JANE HUFF and CARLE MYERS, *Defendants*.	)

JURY TRIAL DEMAND

COMPLAINT

AND NOW, comes the Plaintiff, P. Brian Brumfield, by and through his attorney, Marc F. Lovecchio, Esquire, of Campna, Campana & Lovecchio, L.L,P., and pursuant to the Pennsylvania Rules of Civil Procedure, files this Complaint in Civil Action against Defendants, as follows:

1. Plaintiff is an adult individual who resides at 521 Sylvan Drive, South Williamsport, Lycoming County, Pennsylvania 17701.

2. Defendant Sherri Sanders, in an adult individual, who resides at 4 Deerfoot Lane, New Columbia, Union County, Pennsylvania 17856.

3. At all times relevant hereto, Defendant Sanders was employed by the United States Department of Justice, Federal Bureau of Prisons, as a Correctional Officer, and presently works at F.C.I. Allenwood, P.O. Box 2500, White Deer, Union County, Pennsylvania 17887.

4. Defendant Michelle Shadday, is an adult individual whose resident address is unknown.

5. At all times relevant hereto Defendant Shadday was employed by the United States Department of Justice, Federal Bureau of Prisons, as a Food Service Foreman, and is presently employed at the Federal Detention Center, P.O. Box 68955, Seattle, Washington 98168.

6. Defendant Brenda Derr-Blakeney, is an adult individual who resides at 418 Main Street, Watsontown, Northcumberland County, Pennsylvania 17777.

7. At all times relevant hereto, Defendant Derr was employed by the United States Department of Justice, Federal Bureau of Prisons, as a Correctional Officer, and presently works at F.C.I. Allenwood, P.O. Box 2500, White Deer, Union County, Pennsylvania 17887.

8. Defendant M. Jane Huff is an adult individual whose resident address is unknown.

9. At all times relevant hereto, Defendant Huff was employed by the United States Department of Justice, Federal Bureau of Prisons, as a Correctional Officer, and presently works at F.C.I. Forrest City, 729 St. Francis Roadway 806, Forrest City, Arizona 72335, as a Correctional Counselor.

10. Defendant Carla Myers, is an adult individual who resides at R.R. 6, Box 62, Muncy, Lycoming County, Pennsylvania 17756.

11. At all times relevant hereto, Defendant Myers was employed by the United States Department of Justice, Federal Bureau of Prisons, as a Correctional Officer, and presently works at F.C.I. Allenwood, P.O. Box 2500, White Deer, Union County, Pennsylvania 17887.

12. Prior to October 11, 1996, Plaintiff was employed by the United States Department of Justice, Federal Bureau of Prisons, as a Supervisory Correctional Officer at the Federal Correctional Institution in White Deer, Pennsylvania 17887.

13. On October 11, 1996, Plaintiff was notified that his duty station was being changed to his home address.

14. Plaintiff subsequently discovered this action was taken as a result of the individual Defendants intentionally, willfully and maliciously lying about the Plaintiff to other individuals employed by the Bureau of

Prisons for the purpose of having charges lodged against the Plaintiff in order to have the Plaintiff removed or demoted in connection with Plaintiff's employment.

15. Plaintiff was on home duty status for approximately three weeks at which time he was called back to work on Halloween Day, 1996. Upon returning to work, Plaintiff asked Warden Harding why he was called back to work at which time he was informed that an investigation was ongoing but that he was being returned to work because she "wanted him to be there." No further explanation was provided to Plaintiff.

16. The individual Defendants conspired to cause charges to be brought against the Plaintiff and to cause the Plaintiff to be disciplined in connection with his employment, knowing that the allegations they were making against the Plaintiff were false and would injure him.

17. The specific allegations being made against the Plaintiff by the individual Defendants involved claims of job related sexual and/or inappropriate conduct and statements.

18. Plaintiff returned to work for three weeks as a Supervisory Correctional Officer at F.C.I. Allenwood with no explanation as to the ongoing investigation when by letter dated November 25, 1996, the Plaintiff was informed that his duty station was being changed to Outside Maintenance at the United States Penitentiary, Allenwood.

19. Plaintiff was not advised as to the reason for this change nor did the Plaintiff have any experience whatsoever in connection with maintenance work.

20. On December 11, 1996, Plaintiff was provided with a Memo dated December 6, 1996, by Captain D. L. Richards reminding the Plaintiff that his contacts within the institution were limited and that the Plaintiff was prohibited from contacting any other staff within the institution unless otherwise cleared in writing by the Captain, Human Resources or the Warden.

21. On January 22, 1997, Plaintiff was informed by Captain Richards that while serving in his assignment in maintenance at the complex garage, he was not permitted to work any overtime or to attend any annual refresher training. Although the Plaintiff requested documentation to support that decision, it was never provided to him.

22. On March 3, 1997, the Plaintiff was provided with Quarterly Performance Significant Log Entries verifying fully successful performance by the Plaintiff for the prior six months in connection with his job duties.

23. On March 4, 1997, Captain Richards rescinded the log entries noting that because he did not observe the Plaintiff's actual work performance over the past 90 days, it would be inappropriate for him to give the Plaintiff any rating regarding his performance.

24. On or about March 10, 1997, the Plaintiff was issued a Notice by Associate Warden John Nash which proposed that he be removed from his position for unprofessional conduct and failure to follow the rules of an official investigation.

25. This proposal was based upon the false statements and misconduct of the individual Defendants as set forth above.

26. The Plaintiff submitted written responses through his attorney, to the proposed Notice on March 13, 19, and 25, 1997, which claimed that the allegations were false.

27. Furthermore, the Plaintiff submitted the results of a polygraph test that was administered by a polygraph examiner for the Pennsylvania State Police, in which the polygraph examiner concluded that the Plaintiff was non-deceptive in denying the allegations against him.

28. Moreover, the Plaintiff submitted proof that his signature on a May 20, 1996 Acknowledge of Receipt of Standards cf Employee Conduct Form was a forgery.

29. Despite the evidence presented by the Plaintiff; by Notice dated April 7, 1997, Warden Harding found the charges sustained and fully supported by the evidence.

30. Warden Harding claimed that the Plaintiff made sexually explicit comments to or around female staff and that such destroyed his credibility and effectiveness as a supervisor.

31. As a result of the Warden's conclusions, she demoted the Plaintiff to a non-supervisory position of Correctional Officer, GS-007-08, Step 10.

32. On April 7, 1997, the Plaintiff was called to the Warden's Office at which time the Warden informed the Plaintiff of the aforesaid demotion. The Warden informed the Plaintiff that she had to believe the written affidavits of the female employees who had brought allegations against the Plaintiff and that the results of the polygraph meant nothing to her because she did not ask the Plaintiff to take the test and, therefore, put no credence in the results.

33. The Warden then asked the Plaintiff what institution he wanted to be transferred to as he could no longer effectively work at F.C.I. Allenwood. The Plaintiff informed the Warden that he wished to remain at his present position at the U.S.P. garage or, if necessary, to be transferred to the Federal Prison Camp in Allenwood which was located approximately five miles from F.C.I. Allenwood.

34. The reasons provided by the Plaintiff in connection with such a request were that he wanted to remain close to his fiancee who was also co-habitating with him and suffering from mental, emotional and physical conditions; and to remain close to his attorney in order to handle his appeal through the Merit System Protection Board.

35. On April 14, 1997, the Plaintiff was provided with an Employee Performance Appraisal for the rating period from April 1, 1996 to March 31, 1997 at which time it was noted that the Plaintiffs performance was considered outstanding in all elements.

36. On or about April 14, 1997, the Plaintiff was called to Warden Harding's Office at which time she informed

the Plaintiff that he was being transferred to F.C.I. Fairton, New Jersey, and that the transfer was effective June 8, 1997.

37. On April 25, 1997, the Plaintiff was informed by the Warden that there were no positions available at the Federal Prison Camp at Allenwood and that he was being sent as a Corrections Officer to F.C.I. Fairton, New Jersey.

38. The Plaintiff told Warden Harding that the transfer was detrimental to his appeal to the Merit System Protection Board and would also cause him to be removed from his fiancee who was ill and under doctor's care. The Warden responded that the Camp had no openings and that she could not become involved in any personal matters concerning the Plaintiff and his fiancee.

39. By letter dated May 5, 1997, and pursuant to a de facto policy of the Bureau, the Plaintiff contacted the Associate Warden requesting that he be allowed up to 12 weeks from the time he was told of the impending transfer and accordingly, requested an extended reporting date.

40. On May 12, 1997, the Warden denied the Plaintiff's request for an extension noting that the reporting date of June 8, 1997 best served the needs of the Government and was not unreasonable.

41. On May 15, 1997, the Plaintiff requested that the Warden reconsider his transfer to F.C.I. Fairton, New Jersey, and allow him to remain in his current capacity. He also requested, in the alternative, that he have additional time before being transferred.

42. As a basis for his request, the Plaintiff noted the situation involving his children, financial concerns and his fiancee's ongoing medical problems.

43. The Warden denied Plaintiff's requests and on May 27, 1997, the Plaintiff requested leave without pay status effective June 7, 1997.

44. On May 27, 1997, the Warden formally denied the Plaintiff's second request to extend his reporting date again concluding that the reporting date of June 8, 1997 best served the needs of the Government.

45. On May 29, 1997, the Warden informed the Plaintiff that she was not the proper approving official with respect to the Plaintiff's request for leave without pay status and that the Plaintiff would need to contact the Warden at F.C.I. Fairton, New Jersey.

46. The Plaintiff contacted Warden Morris at F.C.I. Fairton by Memo dated May 30, 1997 requesting leave without pay.

47. The Plaintiff supplemented his request for leave without pay based upon new circumstances by letter dated July 7, 1997.

48. On or about July 14, 1997, Warden Morris denied the Plaintiff's request for extension of time and for leave without pay and required by Plaintiff to report to duty on Monday, July 21, 1997.

49. On June 18, 1997, the Plaintiff sustained a broken left thumb while playing softball. A cast was placed on his left arm and he was under the care of a specialist. He was provided with a sick leave slip stating he could return to work on July 27, 1997. A copy of the sick leave slip was sent to Captain S. Morris at F.C.I. Fairton.

50. The Plaintiff requested sick leave for the week of July 20 through July 26, 1997, due to his broken thumb. Plaintiff spoke with Captain S. Morris at F.C.I. Fairton and was accused of forging the request for sick leave. LMR Specialist Susan Marlo was consulted who verified the Plaintiff did, in fact, have a broken left thumb. Sick leave was then approved.

51. The Plaintiff was forced to resign under the circumstances and notified the Bureau of Prisons of his decision and the reasons therefore.

52. With respect to the investigation of the claims against the Plaintiff, in September of 1996. Warden Harding conduced both group and private meetings with females at F.C.I. Allenwood and encouraged them to come forward and speak out against any male supervisors that they felt had done them injustice or committed any wrongs. The Plaintiff was the Special Investigate Supervisor (SIS) and had conducted many staff investigations including investigations on some of the Defendants or their significant others.

53. In October and November of 1996, Bureau of Prisons Internal Affairs Special Agents visited F.C.I. Allenwood to conduct interviews with various staff members concerning the allegations against the Plaintiff.

54. Subsequently, the individual complainants were asked to and did sign affidavits containing false facts concerning the Plaintiff.

55. Furthermore, in connection with the allegations, some of the individual complainants submitted written false statements of alleged misconduct.

56. The allegations set forth by the individual Defendants in their affidavits and written statements, as well as the oral statements that they gave to the investigating agents, were false and intended solely to injure the Plaintiff as set forth previously herein.

57. Defendant Sanders specifically noted in an affidavit and/or written statement and/or during the proceedings, that the Plaintiff, made an implication about oral sex during a pool game, that the Plaintiff had a wooden penis laying on the desk, that she believed the Plaintiff made a sexually explicit statement about underwear, and that the Plaintiff advised her to keep her mouth shut in connection with the investigations.

58. Defendant Shadday alleged in her affidavit and/or during the proceedings, that the Plaintiff looked her over, the Plaintiff followed her around and asked her when she was going to cook dinner for him, that the Plaintiff asked her to buy flowers for him, and that the Plaintiff made rude comments regarding her anatomy.

59. Defendant Derr-Blakeney alleged in her affidavit and/or during the proceedings, that the Plaintiff had a bet with another individual about how many people would

ask her out, that the Plaintiff asked her questions about competition and that the Plaintiff would ask her out, that the Plaintiff made sexually explicit comments.

60. Defendant Huff alleged in her affidavit and/or during the proceedings, that the Plaintiff made rude, sexual, sexist and ignorant comments to or about women; that he made a derogatory racial remark, that he referenced an employee's anatomy by utilizing a sexist statement, that he made other specified inappropriate comments, that he made comments about her having an interracial relationship with her supervisor, Joseph Carter, and that he made a veiled sexual statement.

61. Defendant Myers noted in her affidavit that the Plaintiff made statements about coming over to her house and keeping her company, always asked her questions about her divorce, made inappropriate sexual comments and that he made statements to others about her having a desire for him.

62. All of the statements set forth in the preceding paragraphs of 57 through 61 were false and the Defendants knew of their falsity.

63. The acts and statements of the Defendants as aforesaid, were made outside the scope of the employment duties of the Defendants. The applicable policies, procedures and standards of employee conduct of the United States Department of Justice, Federal Bureau of Prisons, prohibit the knowing and willful providing of false statements during official investigations and require employees to conform with integrity regulations, to uphold the ethical rules governing their professions, to truthfully respond to questions during

official investigations and to provide truthful signed affidavits during official investigations.

COUNT I
PLAINTIFF V. ALL DEFENDANTS
(CIVIL CONSPIRACY)

64. Plaintiff incorporates the previous averments of this Complaint as fully as if said averments were restated at length herein.

65. The Defendants combined or agreed with each other, with the intent to commit certain unlawful acts or to do otherwise lawful acts by unlawful means.

66. More specifically, the Defendants agreed to encourage and promote false statements about the Plaintiff, to encourage and actually make false written statements and affidavits about the Plaintiff, to testify falsely concerning the Plaintiff both in depositions and in administrative proceedings, to suppress evidence of Plaintiff's innocence in connection with the claims against him and to encourage false or deceptive statements to be made against the Plaintiff.

67. At all times relevant hereto, the Defendants knew of the wrongful acts they were committing as set forth above.

68. As a direct and proximate result of the civil conspiracy of the Defendants as aforesaid, Plaintiff has been injured and damaged to the extent that he has lost wages and fringe benefits of economic value, his earning capacity has been impaired, his reputation has been tarnished, he has

suffered severe emotional anguish and pain, he has experienced physical pains and discomforts, he has experienced physical symptoms associated with mental stress and anguish, he has expended attorney's fees and has lost the usual enjoyments of life.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants, individually, jointly and severally, in an amount in excess cf $25,000, plus interest and costs of suit, and further avers that this amount exceeds the jurisdictional limitation requiring arbitration.

JURY TRIAL DEMANDED.

COUNT II
PLAINTIFF V. DEFENDANTS
(INTENTIONAL TORT)

69. Plaintiff incorporates the previous averments of this Complaint as fully as if said averments were restated at length herein.

70. Defendants' conduct and statements as aforesaid are actionable as an Intentional Tort under Pennsylvania law and pursuant to § 870 of the Restatements

(Second) of Torts.

71. The nature and seriousness of the harm to Plaintiff was significant.

72. There was absolutely no valid interest promoted by the Defendants' conduct and statements.

73. The means used by the Defendants was reprehensible under the circumstances.

74. The Defendants' motives were evil.

75. The Defendants' conduct and statements were generally culpable and not justifiable under the circumstances.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants, individually, jointly and severally, in an amount in excess of $25,000, plus interest and costs of suit, and further avers that this amount exceeds the jurisdictional limitation requiring arbitration.

JURY TRIAL DEMANDED.

COUNT III
PLAINTIFF V. DEFENDANTS
(WRONGFUL USE OF CIVIL PROCEEDINGS)

76. Plaintiff incorporates the previous averments of this Complaint as fully as if said averments were restated at length herein.

77. The Defendants took part in the procurement, initiation and continuation of civil proceedings against the Plaintiff.

78. The Defendants acted in a grossly negligent manner and without probable cause and primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings were based.

79. The proceedings terminated in favor of the Plaintiff.

80. As a direct and proximate result of the Defendants' wrongful use of civil proceeding, Plaintiff has been damaged as aforesaid.

81. Plaintiff requests all damages pursuant to 42 Pa.C,S.A. § 8353 including the harm resulting from his removal, the harm to his reputation by the defamatory allegations against him, reasonable attorney's fees in defending himself against the proceedings, all specific pecuniary losses and damages far his emotional distress.

82. Moreover, Plaintiff requests punitive damages against the Defendants by virtue of their wrongful, malicious and outrageous conduct.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants, individually, jointly and severally, in an amount in excess of $25,000, plus interest and costs of suit, and further avers that this amount exceeds the jurisdictional limitation requiring arbitration.

JURY TRIAL DEMANDED.

COUNT IV
PLAINTIFF V. DEFENDANTS
(DEFAMATION)

83. Plaintiff incorporates the previous averments of this Complaint as fully as if said averments were restated at length herein.

84. Defendants without privilege or justification, published false and defamatory statements concerning the Plaintiff, to third parties.

84. As a direct and proximate result of Defendants' defamation of the Plaintiff, he has been damaged and injured as aforesaid.

WHEREFORE, Plaintiff demands judgement in his favor and against Defendants, individually, jointly and severally, in an amount in excess of $25,000, plus interest and costs of suit, and further avers that this amount exceeds the jurisdictional limitation requiring arbitration.

JURY TRIAL DEMANDED.

CAMPANA, CAMPANA & LOVECCHIO, L.L.P.

/s/_____

Marc F. Lovecchio
Attorney I.D. No. 41244.
Attorney for Plaintiff
602 Pine Street
Williamsport, PA 17701
Telephone No. (717) 326-2401
Fax No. (717) 326-3498

I verify that the statements made in the foregoing Complaint in Civil Action are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

/s/_____
P. Brian Brumfield

Dated: 7/31/98

IN THE COURT OF COMMON PLEAS
OF UNION COUNTY, PA

[Filed August 7, 1998]

No. 98 731

P. BRIAN BRUMFIELD,
Plaintiff,

v.

SHERRI SANDERS, MICHELLE SHADDAY, BRENDA DERR-BLAKENEY, M. JANE HUFF and CARLE MYERS,
Defendants.

JURY TRIAL DEMAND

TO: SHERRI SANDERS
4 Deerfott Lane
New Columbia, PA 17856
Employment Adddress:
F.C.I. Allenwood
White Deer, PA 17887

BRENDA DERR-BLAKENEY
418 Main Street
Watsontown, PA 17777
Employment Address:

F.C.I. Allenwood
White Deer, PA 17887

CARLA MYERS
R.R. 6, Box 62
Muncy, PA 17756
Employment Address:
F.C.I. Allenwood
White Deer, PA 17887

MICHELLE SHADDAY
Employment Address:
Federal Detention Center
P.O. Box 68955
Seattle, WA 98168

M. JANE HUFF
Employment Address:
F.C.I. Forrest City
729 St. Francis Roadway 806
Forrest City, AZ 72335

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally, or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money

claimed in the Complaint or for any other claim or relief requested. You may lose money or property or other rights important to you.

YOU SHOULD CONTACT YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD A LAWYER, CONTACT:

COURT ADMINISTRATOR
Union County Courthouse
103 South second Street
Lewisburg, PA 17837
Telephone (717) 524-8641

SUSQUEHANNA LEGAL SERVICES
206 Arch Street
Sunbury, PA 17801
Telephone (717) 286-5687

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Union County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office, Union County Courthouse, 103 South Second Street, Lewisburg, Pennsylvania; Telephone No. (717) 524-8641. All arrangments must be made at least 72 hours prior to any hearing or business before the Court.

CAMPANA, CAMPANA & LOVECCHIO, L.L.P.

/s/_____

Marc F. Lovecchio
Attorey I.D. No. 41244.
Attorney for Plaintiff
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Williamsport, PA 17701
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APPENDIX H

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

OPI: OGC
NUMBER: 3420.08
DATE: March 7, 1996
SUBJECT: Standards of Employee Conduct

1. PURPOSE AND SCOPE. To provide policies and procedures, herein referred to as the "Standards of Conduct," to complement those issued by the Office of Government Ethics on:

- employee conduct and responsibility,
- ethics in matters involving conflicts of interest,
- post-employment restrictions,
- procurement integrity issues,
- attorney ethics, and
- outside employment.

These standards apply to all employees of the Bureau of Prisons (Bureau), including employees of the Public Health Service and the National Institute of Corrections, and to any person detailed to any of those agencies under the Intergovernmental Personnel Act. Such employees are subject to certain standards and prohibitions - - some statutory, some regulatory, and some a matter of good ethical and moral practice that is essential to the efficiency of the organization. Contractors and volunteers working in Bureau

facilities also are expected to conduct themselves by these standards.

While issuances from the Office of Government Ethics and the Department of Justice address the basic standards and prohibitions applicable to Bureau employees, this Program Statement more specifically addresses situations that are especially applicable to Bureau employment. It does not and cannot, however, attempt to detail every incident which could violate the Standards of Conduct.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Employees will conduct themselves in a manner that creates and maintains respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.

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. . . as any material that can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution. Contraband includes, but is not limited to, the following: letters, stamps, money, tools, weapons, paper, food, implements, writing material, messages, instruments, alcoholic beverages, drugs, photographic equipment, computer software, recording devices, etc.

13. OFFICIAL INVESTIGATION

a. Every employee is required to immediately report to management any violation or attempted violation of any law or regulation and any act or omission by any person which could result in a breach of institution security.

b. It is not the policy of the Bureau to routinely search employees or their property; however, when the CEO has a reasonable suspicion to suspect than an employee is in possession of contraband items which, if introduced, could endanger the safety of staff or inmates or the security of the institution, the CEO may authorize the search of an employee or his or her personal property. Searches may also be authorized when the CEO has a reasonable suspicion that an employee is transporting contraband. Other circumstances may warrant an order by the CEO to randomly search employees or any person or their property when entering or leaving the institution.

c. During the course of an official investigation, employees are to cooperate fully by providing all pertinent information which they may have. Full cooperation requires truthfully responding to all questions and providing a signed affidavit, if requested. Any employee who fails to cooperate fully or who hinders an investigation is subject to disciplinary action, up to and including removal.

14. JUST DEBTS. Failure on the part of any employee, without good reason and in a proper and timely manner, to honor debts acknowledged by him or her to be valid or reduced to judgment by a court, or to adhere to satisfactory arrangements for the settlement thereof, may be cause for

disciplinary action. Depending on the circumstances, an employee who receives a legally valid garnishment order may be subject to disciplinary action.

15. CONFIDENTIALITY. Employees of the Bureau have access to official information ranging from personal data concerning staff and inmates to information involving security. Because of the varying degrees of sensitivity of such information, it may be disclosed or released only as required in the performance of an employee's duties or upon specific authorization form someone with the authority to release official information. . . .